

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1010 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DHARAMDAS BALCHAND JAISINGANI

Versus

SECRETARY

Appearance:

MR PF ADHVARYU for Petitioner

MR JITENDRA M PATEL for Respondent No. 1

MR JV MEHTA for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 30/06/2000

ORAL JUDGEMENT

The petitioner of this revision application is the original plaintiff, who has filed Regular Civil Suit No.308 of 1996, in the Court of Civil Judge (J.D.), at Baroda. The said suit is for declaration and injunction.

It is the case of the plaintiff that he is doing business in partnership with the defendant No.2 and he is dealing in foodgrains by doing wholesale business. That the plaintiff was doing the said business initially at Shop No.28 at Hathikhana. However, subsequently, the said business was closed. It is the further case of the plaintiff that the husband of the defendant No.2 was keeping the accounts in the capacity of Manager and he was managing all financial dealings on behalf of the plaintiff. Plaintiff subsequently came to know, when he tried to recover the amount from the customers, that the husband of the defendant No.2, viz., Anil Jain, had already recovered the amount of Rs.3,30,000/-. However, the said amount was not credited in the partnership firm and that the plaintiff had also filed criminal complaint against the husband of the defendant No.2. That the defendant No.2 has started shop, in the name of "Devendra Brothers", at shop No.8/B/44/2 at the Agricultural Produce Market Committee, Hathikhana. However, the aforesaid shop is taken by using the money of the plaintiff's firm. That the defendant No.2 has no right to start the same business, which the plaintiff used to do. According to the plaintiff, since the defendant No.2 had utilized the money of the plaintiff's business, the plaintiff has all the rights in the business, which was started by the defendant No.2. The aforesaid suit, therefore, was filed for a permanent injunction. It is the say of the plaintiff that he has also got shares in the business, which the defendant No.2 has started. In the said suit, an application Exhibit 5 was given for interim injunction, restraining the defendants from transferring, alienating or dealing with in any manner the suit shop, i.e. "Devendra Brothers", Shop No.8/B/44/2 at Hathikhana, Baroda. The learned trial Judge, by his judgment and order dated 23rd April, 1996 rejected the said application. It was found by the trial court that there is nothing on record to show that the defendant No.2 has started the present business with the amount of the firm of the plaintiff, i.e. Anuch Traders. It was found that there is neither balance of convenience nor irreparable injury to the plaintiff. Accordingly, injunction application was rejected. Against the aforesaid order, the original plaintiff preferred an appeal, being Civil Miscellaneous Appeal No.177 of 1996, before the Appellate Court. The learned 4th Extra Assistant Judge, Vadodara, by his order dated 3rd June, 1996, rejected the interim application at Exhibit 5 given in the aforesaid appeal and during the pendency of that appeal, i.e. Civil Miscellaneous Appeal No.177 of 1996, the transaction in question, i.e. transaction between the defendant No.1 and defendant NO.2 was ordered to be

subject to the decision of the appeal. The present revision application has been filed against the aforeaid order passed below Exhibit 5 in Civil Miscellaneous Appeal No.177 of 1996.

So far as the present revision application is concerned, I do not find any error of law or of jurisdiction in the impugned order of the learned appellate Judge. Considering the reasoning given by the trial court and considering the application of the present petitioner, the appellate court found that there were no justifiable reasons for granting injunction as prayed for by the plaintiff during the pendency of the civil miscellaneous appeal. Even otherwise, the Civil Miscellaneous Appeal is of 1996 and by this time, it must have been decided. In any case, I do not find any infirmity in the order of the appellate court while deciding Exhibit 5 in Civil Miscellaneous Appeal No. 177 of 1996. In that view of the matter, this Revision Application is rejected. Rule is discharged. Interim relief is vacated. No order as to costs.

It is, however, directed that if Civil Miscellaneous Appeal NO.177 of 1996 is not decided by this time, the appellate court is directed to dispose of the same at the earliest and, in any case, within a period of three months from the date of receipt of writ of this order. The writ may be sent to the District Court, Baroda forthwith.

30th June, 2000 (P.B. Majmudar, J.)

(apj)